

JAN 08 2007

Remarks.Claim Objections.

Claim 2 does not appear to have either the phrase "primary wall member" or "secondary wall member." Claim 3 is amended to delete the word "the" and substitute the word "a" in the first instance of the phrase "the primary wall member," which is in the first line of claim 3. Claim 4 uses the phrase "the secondary wall member." Claim 4 is amended to delete the word "the" and substitute the word "a" in the phrase "the secondary wall member," which is in the first line of claim 4. Claim 52 is amended to delete the word "the" and substitute the word "a" in the first instance of the phrase "the primary wall member," which is in the first line of claim 52. Claim 53 is amended to delete the word "the" and substitute the word "a" in the phrase "the secondary wall member," which is in the first line of claim 53.

Claim Rejections – 35 USC § 102(b).

1. The Examiner rejects claims 1-10, 12, 33-34, and 51-57 under 35 USC § 102(b) as being anticipated by A.H. Schaffert (1,801,240). Claims 1-10, 12, 33-34, and 51-57 were examined based upon applicant's election of Species I directed to Figure 5.

2. The Examiner states that Schaffert discloses a wall fastener capable for use between a stud wall and a mounting track, and configured to support first and second wall cladding material members relative to each other to provide a continuous wall cladding material structure between the stud wall and the mounting track, the mounting track having side walls with an inside surface and an outside surface.

However, Schaffert does not disclose, among other things, a wall fastener. It discloses a fastening clip (column 1, line 46) having a structure that is wholly different than applicant's wall fastener. Figures 3-6 of Schaffert disclose two opposing edges of body 16 having upstanding overturned tongues 17. One end of each tongue 17 is adjacent hook 19. The other end of each tongue 17 is adjacent tongue 20. In comparison, applicant's wall fastener, illustrated in Figure 5 of the application, has a fastening

structure 80 that is not adjacent top edge 75 (third edge of the body 16, column 2, line 55 of Schaffert) of the first portion 62 (body 16, column 1, lines 48 and 49, of Schaffert) of the wall fastener. Schaffert has prong 18 that rises upward between tongues 17 on body 16. In comparison, applicant's wall fastener does not have prong 18. Schaffert has an underturned hook 19 on the third edge of the body 16. In comparison, applicant's wall fastener does not have an underturned hook 19. It has a third portion 66 that depends downward from a first portion 62. And rather than turning under and parallel to the back side of Schaffert's body 16, applicant's wall fastener extends outward from the first portion 62. On an edge of the Schaffert body 16 opposite hook 19 are two outstanding tongues 20 (column 2, lines 57-59 of Schaffert). In comparison, applicant's wall fastener does not have the outstanding tongues 20 of Schaffert.

Schaffert does not disclose, among other things, a wall fastener that has the capabilities ascribed to it by Examiner. Rather, Schaffert discloses a fastening clip (column 1, line 46) having capabilities (i.e., serves very different functions) that are wholly different from applicant's wall fastener. Schaffert's fastening clip is "...for securing deck members to the purlins or supporting beams...." See column 1, lines 1-4. The purlin supports a horizontal roof structure (column 1, lines 22-23 of Schaffert); not a vertical wall structure (Figures 1-3 of application). The purlin is horizontal (column 1, lines 24-26); in the application the stud 20 (Figure 2 of the application) is vertical as is a side wall 54 of the mounting track 50 to which wall fastener of applicant's claims is attached (Figures 1-3 of application). The purlins support horizontal decking material to form a roofing structure; the stud 20 and mounting track 50 support vertical wall cladding material members 32 and 40. See column 1, lines 1-4 of Schaffert. The fastening clip 16 of Schaffert lies on top of the purlin in a horizontal position; the wall fastener of applicant's claims lies in a vertical position and is affixed to a side wall 54 of the mounting track 50.

Independent claims 1 and 33 of the application disclose "A wall fastener for use between a stud wall and a mounting track...." And dependent claims 2-10, 12, 34, and 51-57 incorporate the same disclosure.

The wall fastener of applicant's claims and the Schaffert fastening clip are structurally different and have very different capabilities (i.e., serve very different functions).

3. The Examiner states that the Schaffert fastening clip is comprised of a first portion 62 (body 16, of Schaffert) having first 76 and second 78 opposed primary surfaces and first 79 and second 81 sides, the first portion 62 capable of being secured to a mounting track 50 (Figures 1-3 and 5 of application) with the first primary surface 76 facing the mounting track 50 and the second primary surface 78 facing a wall cladding material member 32, 40.

The underside of the Schaffert fastening clip lies horizontal and adjacent to the top of the purlin and is bounded by (a) a third edge of body 16, (b) two tongues 17 on opposite edges of the body, and (c) an edge opposite the third edge, from which two tongues 20 protrude. In comparison, the first primary surface 76 of applicant's wall fastener (Figure 5) lies against the stud and mounting track. The second primary surface 78 lies against the backside of the primary wallboard 32. In other words, the underside of the Schaffert fastening clip is the reverse of the first primary surface 76. Consequently, the first portion 62 of applicant's wall fastener is not capable of being secured to a purlin and the underside of Schaffert's fastening clip is not capable of being secured to a mounting track 50. Moreover, there is no mounting track 50 to which the underside or the upperside of the Schaffert fastening clip can be secured. And there is no wall cladding material member 32, 40. A wall is not disclosed in the Schaffert patent. Applicant's wall fastener is a device for fixed engagement with a mounting track 50, but for sliding engagement with a vertical stud 20 (Figures 1-3 of the application). The Schaffert fastener sits on top of a horizontally positioned purlin. It is secured to the purlin by hook 19 and by tongue 20. Hook 16 receives the horizontal flange of the purlin. The deck members are secured to the fastening clip by inserting rib 13 of deck member 10 under tongue 17 with the end of its flange 12 butted against prong 18. Prong 18 is then bent over flange 12 by a blow of the workman's hammer (column 2, lines 61-77 of Schaffert). Tongue 20 is bent down from the top of the purlin on to its vertical side, thereby immovably securing the fastening clip to the purlin and the deck member to the clip.

Applicant's wall fastener and the Schaffert fastening clip have very different structures and serve very different functions.

4. The Examiner states that Schaffert's fastening clip comprises a second portion (19, at the end of the curved portion) having a third primary surface that extends parallel to the first portion and is offset from the second primary surface a predetermined distance, (the second portion capable of being secured to the second wall cladding material member with the third primary surface facing the second wall cladding material member thereby supporting the second wall cladding material member in engagement with the first wall cladding material member).

Schaffert does not have a second portion 19 that is analogous to the second portion 64 (Figure 5) of applicant's wall fastener. Schaffert has an underturned hook 19 on the third edge of body 16. Applicant's wall fastener does not have underturned hook 19. Applicant's wall fastener has a third portion 66 that depends downward from a first portion 62. And rather than turning under first portion 66 and parallel to the back side of Schaffert's body 16 (Figures 3-6 of Schaffert), applicant's wall fastener has a second portion 64 that extends outward and away from the first portion 62.

5. The Examiner states that the fastener comprises a first fastening structure (17) secured to the first side of the first portion, (where the first fastening structure is capable of slidably engaging the stud wall thereby retaining the wall fastener to the stud wall while providing sliding movement of the wall fastener relative to the stud wall).

As shown in Figures 3-6 of Schaffert, one end of a first fastener structure 17 is located adjacent hook 19 and the other end of the first fastener structure 17 is located adjacent tongue 20. In contrast, one end of a wall fastener 60 is located adjacent bottom edge 77 of the first portion 62 and the other end of the wall fastener structure 60 is located relatively far from the top edge 75 of the first portion 62 (Figure 5 of the application). The Examiner attempts to show that the Schaffert fastening clip is analogous to the wall fastener of the application. But the Schaffert fastening clip, unlike the wall fastener of the application, has tongues 20. To be analogous, the fastening structure 80 of the application would be located adjacent the bottom edge of tongue 20 of Schaffert. The Schaffert fastener clip is affixed to the purlin and the metal decking, as described in this Remarks section, whereby the combination of the metal decking, the

purlin, and the fastener structure is immovable. When bending the hypothetical combination of tongue 20 (Schaffert) and fastening structure 80 (located adjacent the bottom edge of tongue 20) over the opposing edge of purlin 7, fastening structure 80 (Figure 5 of the application) (a) moves with the bending tongue 20, (b) is tucked against the side of the purlin 7 when the bend is completed, and (c) cannot engage with a stud wall.

As previously mentioned in these Remarks, the Schaffert fastener is designed to fixedly hold sheet metal deck members 9 to purlins, which are supported by posts, to form a roof deck – a horizontal surface. The language in column 2, lines 74 – 77 states that “The clip is thus not only fastened to the purlin, but the deck member is fastened to the clip member so that the entire structure is effectively tied together.” The following sentences in column 2, lines 69 – 74, more dramatically illustrates that the clip (i.e., fastener) is fixed to the purlin and to the deck members: “A blow of the workman’s hammer bends said tongue 18 over the flange. This fastens the clip to the deck member. One of the tongues 20 is thereafter bent downwardly alongside the purlin. The clip is thus not only fastened to the purlin, but the deck member is fastened to the clip member so that the entire structure is effectively tied together.”

The Schaffert fastener is not capable of slidingly engaging a stud wall.

The wall fastener of claims 1-10, 12, 33-34, and 51-57, on the other hand, is designed for use between a stud wall and a mounting track to provide sliding movement of the wall fastener relative to the stud wall.

6. Certain of the differences between the wall fastener of the application and the Schaffert fastening clip have been discussed in these Remarks. However, there are other differences that were not discussed, yet lend further support to the fact that the differences between the Schaffert fastening clip and applicant’s wall fastener are profoundly different from one another in structure and function.

7. A prima facie case of anticipation is established when the Examiner provides (a) a single reference (b) that teaches or enables (c) each of the claimed elements (arranged as in the claim) (d) expressly or inherently (e) as interpreted by one of ordinary skill in the art. *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F. 2d 1452; 221 USPQ 481, 485 (Fed. Cir. 1884). The Schaffert patent does not

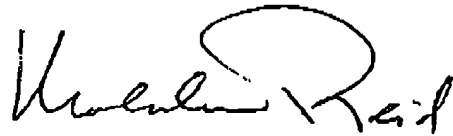
teach or enable each of the claimed elements of applicant's wall fastener. Schaffert does not do so either expressly or inherently. And one of ordinary skill in the art would readily recognized that the Schaffert fastening clip is both functionally and structurally very different from applicant's wall fastener.

As a consequence, no anticipation by Schaffert can be found because, among other things, the use and structure of the Schaffert fastener for fixedly tying deck members to purlins differs dramatically from the use and structure of applicant's claimed wall fastener for slidingly engaging a stud wall thereby retaining the wall fastener to the stud wall while providing sliding movement of the wall fastener relative to the stud wall.

Conclusion.

In light of the foregoing, Applicant is of the opinion that claims 1-12, 33-36, and 47-57 are not anticipated by Schaffert and are in a condition for allowance. Applicant respectfully requests that the Examiner allow each of the claims.

Sincerely,



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